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Attorneys for Defendant
VISA U.S.A. INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SHERI L. KENDALL, dba BALA HAIR
SALON, JAMES MASER, MAIZ
HOLDING COMPANY, dba PICANTE
COCINA RESTAURANT, on Behalf of
Themselves and All Others Similarly
Situated,

Plaintiffs,

v.

VISA U.S.A. INC., MASTERCARD
INTERNATIONAL, INC., BANK OF
AMERICA, N.A., a subsidiary of BANK
OF AMERICA CORPORATION, WELLS
FARGO BANK, N.A., a subsidiary of
WELLS FARGO & COMPANY, U.S.
BANK, N.A., a subsidiary of U.S.
BANCORP,

Defendants.

Case No.: C04-4276 JSW

**DEFENDANT VISA U.S.A. INC.'S
NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT**

FED. R. CIV. P. 56

Hearing: July 8, 2005
Time: 9:00 a.m.
Courtroom: Two, 17th Floor
Honorable Jeffrey S. White

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on July 8, 2005 at 9:00 a.m., or as soon thereafter as
3 the matter may be heard, in the Courtroom of the Honorable Jeffrey S. White, Courtroom 2,
4 17th floor of the United States District Court, Northern District of California, located at 450
5 Golden Gate Avenue, San Francisco, California, defendant VISA U.S.A. INC. ("Visa") will,
6 and hereby does, move for an order granting summary judgment pursuant to
7 Fed. R. Civ. P. 56 on all claims for relief pleaded in the First Amended Class Action Antitrust
8 Complaint and Demand for Jury Trial.

9 By Order dated March 29, 2005, this Court granted in part Visa's Administrative
10 Request permitting it to bring a partial motion for summary judgment on grounds "related to
11 *NaBanco*." Accordingly, this motion is made on the grounds that this action is factually and
12 legally indistinguishable from the claim considered and rejected by the Eleventh Circuit in
13 *National Bancard Corp. v. Visa U.S.A. Inc.*, 779 F.2d 592 (11th Cir. 1986) ("*NaBanco*"),
14 *aff'g National Bancard Corp. v. Visa U.S.A. Inc.*, 596 F. Supp. 1231 (S.D. Fla. 1984), and on
15 that basis should be barred as inconsistent with long-standing precedent. Visa's system-level
16 default interchange fee continues to be necessary to the existence of the Visa payment card
17 system and therefore does not constitute unlawful price fixing under Section 1 of the Sherman
18 Act, 15 U.S.C. § 1.

19 This motion will be based upon this Notice; the Memorandum of Points and
20 Authorities in Support of Defendant Visa U.S.A. Inc.'s Motion for Summary Judgment; the
21 Declaration of William Sheedy in Support Thereof; the record in this case; any additional
22 evidence or argument presented at or before the hearing on this matter; and all pleadings on
23 file in this action.

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1 DATED: June 3, 2005

Respectfully submitted,

2 HELLER EHRMAN LLP

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5 By s/Marie L. Fiala
6 Marie L. Fiala
7 Attorneys for Defendant
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